IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.458 OF 2001
(Through jail)

Deoram Banshi Waghmare .. Appellant
(Orig.Accused)

versus

The State of Maharashtra .. Respondent

..

Mr.Navin Chomal and Ms Sonia Gujar for the Appellant

Dr.F.R.Shaikh, A.P.P for State-Respondent

**CORAM : SMT RANJANA DESAI AND D.G.KARNIK, JJ**

**DATED : 24th March, 2006**

**ORAL JUDGMENT (Per Smt Ranjana Desai,J)**

1. The appellant was tried in Session case No.96 of 2000 in the Court of the Additional Sessions Judge, Nasik for the offences punishable under sections 501, 506 part II 504 and under section 302 of the Indian Penal Code. By the impugned judgment and order dated 5th September, 2000 the learned Additional Sessions Judge convicted the appellant for the offences punishable under sections 302, 451, 506 part II of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay a fine of Rs. 500/- in default to suffer R.I. for one month. No separate sentence

was awarded for offences under section 451 and 506 of the Indian Penal Code. The said judgment and order is impugned in this appeal. For the sake of convenience we shall call the appellant the accused.

2. It is the case of the prosecution that the accused was the neighbour of deceased Kamlabai. The deceased had obtained a loan of Rs.20/- from the wife of the accused. She could not repay that loan though the accused demanded the said amount. On 8th March, 2000 at about 8 p.m. the accused entered the house of the deceased. He abused and threatened to kill her. The deceased got scared and went to the house of one Dayaram Shankar. She watched TV for sometime and after about an hour, she returned home. She finished the household work and was sitting in the verandah at about 10 p.m.

3. According to the prosecution, the accused all of a sudden came there. He poured kerosene on the deceased and set her on fire. She sustained burns. She extinguished the fire by putting water on herself. Her husband Tulsiram came to the house at about 11 p.m. in the night. She narrated the incident to him. On the next day i.e. on 9th March, 2000 Tulshiram applied

household medicines on the burns of the deceased. He went for work and returned at about 11 p.m. at night. The deceased had unbearable pain on 10th March, 2000. Her husband admitted her in the Rural Hospital, Surgana for treatment.

4. According to the prosecution, on the requisition made by the police the Executive Magistrate recorded her dying declaration which is at Exhibit 24. It was recorded on 10th March, 2000 at 2 p.m. Thereafter, P.S.I.Sanjaykumar Gavit from Surgana police station recorded the statement of the deceased which is at Exhibit 29. On the basis of this statement, he registered an offence under section 307 of the Indian Penal Code. The investigation was started on the basis of the same.

5. The accused was arrested on 11th March, 2000. On 31st March, 2000 Kamlabai succumbed to the burn injuries sustained by her and the offence was converted into section 302 of the Indian Penal Code Post mortem examination was conducted on the deceased. After completion of the investigation, the accused came to be charged as aforesaid.

6. In support of its case, the prosecution examined as many as 8 witnesses. The star witness

of the prosecution obviously is the Special Executive Magistrrate PW 6 Madhukar Kshatriya who recorded the dying declaration of the deceased. The medical evidence consists of the testimony of PW 7 Dr. Virendra Athawale. The details of the investigation have been given by PW 8 P.S.I. SanjayKumar Gavit attached to Surgana police station.

7. The accused denied the prosecution case. He claimed to be innocent. After perusing the evidence, the learned Sessions Judge convicted the accused as aforesaid and hence, this appeal.

8. We have heard learned counsel for the appellant/accused and the learned Additional Public Prosecutor for the State-Respondent. With the assistance of the learned counsel we have gone through the evidence and the record.

9. Mr.Chomal, learned counsel appearing for the accused strenously contended that the learned Sessions Judge erred in convicting the accused. He submitted that the F.I.R. is lodged two days after the date of the incident. The learned counsel submitted that the deceased and her husband did not inform the incident to anyone. They did not approach the police. This conduct is

unnatural. It suggests that the police have concocted the prosecution story. Learned counsel further urged that the discovery of a mug allegedly made on 13th March, 2000 does not inspire confidence. Learned counsel contended that apart from the dying declarations there is no evidence on record to indicate that the accused poured kerosene and set the deceased on fire particularly when PW 3 Raju Waghmare, the brother of the deceased has been disbelieved by the learned Sessions Judge. He therefore, submitted that the order of conviction and sentence should be set aside. In any event, the learned counsel submitted that if this Court comes to the conclusion that the accused had poured kerosene on the deceased and set her on fire in the facts and circumstances of the case, at the most the offence that would be made out against the accused is culpable homicide not amounting to murder and therefore a lesser sentence be awarded to the accused.

10. Dr.Shaikh, learned Additional Public Prosecutor for the respondent on the other hand submitted that the impugned judgment is well-reasoned. It is borne out by the evidence on record and hence no interference is necessary with it.

11. The post mortem notes and the evidence of PW 5 Dr. Devanand Chaudhari indicate that the deceased had received 63 % burn injuries and she died on account of cardio-respiratory arrest due to septicaemic shock due to burns. The incident is of 8th March, 2000. Kamlabai succumbed to her injuries on 31st March, 2000.

12. PW 6 Madhukar Kshatriya is the Special Executive Magistrate of Surgana. According to him, on 10th March, 2000 he received a letter from Surgana police station at about 1.15 p.m about the recording of a dying declaration of a lady who was admitted in the hospital for burns. He went to the Rural Hospital, Surgana and consulted PW 7 Dr. Virendra Athawale and asked Dr. Athawale whether the patient was in a fit condition to talk. Dr.Athawale certified that the patient was in a fit condition to make a statement. Then he recorded the statement of the patient. He asked her name. She gave her name as Kamlabai Tulshiram Pawar.He asked her as to how she had sustained the burns. She disclosed to him that her neighbour Deoram had poured kerosene on her on 8th March, 2000 at about 10 p.m. and set her on fire. According to him, he recorded the statement of Kamlabai as per the narration made by her and

obtained the endorsement of the doctor about the condition. He also obtained the thumb impression of Kamlabai Pawar. Thereafter he signed on the statement. Through the cross examination of this witness, nothing has come on record which could suggest that he is an unreliable witness. We have perused this dying declaration. It is in question and answer form. The doctor has noted that Kamlabai was conscious and in a fit condition to give her statement. In this dying declaration, the deceased has stated that the accused is her neighbour. He used to get drunk and abuse and quarrel with her family. She has further stated that on 8th March, 2000 the accused came to her house at 10 p.m., abused her, poured kerosene on her and set her on fire. We find no reason to disbelieve this witness. He is an independent witness. He has no axe to grind against the accused. There is no reason why he should depose against the accused and falsely implicate him.

13. The evidence of PW 6 Madhukar Kshatriya is supported by the evidence of PW 7 Dr.Virendra Athawale. Dr.Athawale has stated that he had examined the deceased and found that she was in a fit condition to talk. On the basis of the evidence of PW 6 Kshatriya and PW 7 Dr.Athawale, it can be safely concluded that the deceased made

a declaration in which she stated that the accused had poured kerosene on her and set her on fire.

14. PW-8 PSI Sanjaykumar Gavit has deposed about the dying declaration of the deceased recorded by him on 10/3/2000 at 4.00 p.m. which is at Ex-29. According to him, after getting to know about the incident he went to the hospital. After confirming from Dr.Athawale that the deceased was in a fit condition to make a statement, he recorded her statement. She told him that the accused had poured kerosene on her because she could not repay loan of Rs.20/-. The deceased has put her thumb impression on this dying declaration. PW-8 PSI Gavit has also signed on it and Dr. Athavale has noted on it that the deceased was in a fit condition to give a statement. No doubt this dying declaration contains more details. There are certain additions. But the basic story that it is the accused who came to the house of the deceased and poured kerosene on her and set her on fire is there in both the statements. There is no reason to discard Ex-29. Both these documents i.e. Ex 24 and 29 establish the prosecution case.

15. The prosecution has then examined PW 3 Raju Waghmare, brother of the deceased. It is not

necessary for us to refer to this evidence because the learned Sessions Judge has disbelieved this witness as he had come to the Court after consuming liquor and given evidence after consumption of liquor. We concur with the Sessions Judge on this aspect.

16. PW-1 Narayan Hinde has proved memorandum and panchanama, Ex-15 and Ex-14 respectively under which at the instance of the accused a mug smelling of kerosene and a match-box were recovered from his house. This discovery is supported by PW-8 PSI Sanjaykumar Gavit. By itself it is not a very strong circumstance. But we can only say that it lends some support to the prosecution case.

17. It was argued that there is considerable delay in recording the FIR. Conduct of the deceased and her husband is also unnatural and it casts a shadow of doubt on the prosecution story. It is true that though the incident took place at about 10.00 p.m. on 8th March, 2000, the deceased went to the hospital only on 10th March, 2000. On 9th March, 2000, the husband of the deceased applied some home medicines to the burn injuries of the deceased and he went for work. They did not inform anyone. They did not approach the

police. The delay in lodging FIR, it is submitted, suggests that the police have manufactured it.

18. At first blush this argument appears to be attractive. But the conduct of the parties must be examined against their social background. The deceased and her husband belong to labour class. They are rustic and poor people. The fact that on the next day, the deceased had to leave for work in the morning indicates that they were struggling to make two ends meet. It appears that the burns were not very severe and therefore the deceased's husband applied home medicines to them at night and the deceased was taken to the hospital only when the pain was unbearable. So far as approaching the police station is concerned, it is possible that they were scared and must not have approached the police out of fear. In the face of dying declaration recorded by Special Executive Magistrate who is an independent witness it is not possible for us to hold that the delay in lodging FIR or conduct of the deceased and her husband makes the prosecution story suspect.

19. It is well settled that conviction can rest on an uncorroborated dying declaration if it inspires confidence. In the ultimate analysis we

are of the opinion that the two dying declarations of the deceased which are at Ex-24 and Ex-29 establish the prosecution case beyond doubt. There also appears to be motive for the crime. PW4-Kashinath who is a resident of the same locality has stated that there used to be quarrels between the accused and the deceased. In her dying declaration also the deceased has referred to their strained relationship. We are, therefore, of the opinion that the prosecution has established its case beyond reasonable doubt.

20. The question now is what offence is committed by the accused. The incident is said to have taken place on 8th March, 2000. The deceased had suffered 63 % burns injuries. It is significant to note that on 13th March, 2000 on clinical examination the doctor had pointed out that the deceased had suffered 40 to 45 % burn injuries. Therefore, it appears that the injuries were not very serious and that is evident from the fact that the deceased succumbed to her injuries after 22 days i.e. on 31st March, 2000 and the cause of death as per the post mortem report is cardio respiratory arrest due to septicaemic shock due to burns. We have already noted that though the incident had taken place on the night of 8th March 2000, the deceased did not go to any doctor on

that day. Her husband Tulshiram Pawar is said to have applied some medicine to the injuries at home. Even on the next day he did not take her to the doctor. He went for his work and it is only on 10th March, 2000 that the deceased went to the hospital which also indicates that the injuries were not very serious. It appears that the deceased died mainly because of the complications arising out of septicaemic shock. It is quite possible that septicaemic shock was the result of her not being treated properly and her going to the hospital very late. In the peculiar facts and circumstances of the case, therefore in our opinion, intention to commit the murder of Kamlabai cannot be attributed to the accused. Besides, the deceased in her dying declaration has stated that there used to be quarrels between her and the accused which also indicates that relations between the deceased and the accused were strained. The F.I.R. also indicate that there was some dispute about the loan which was taken by the deceased from the wife of the accused. This incident appears to have taken place in a heat of passion without premeditation and without intention of causing death. Therefore, the offence would fall under section 304 part II of the Indian Penal Code. We are informed that the accused is in jail for about

more than 6 years. In the circumstances of this case, in our opinion, the imprisonment already undergone by the accused should be treated as the sentence for the offence under section 304 part II of the Indian Penal Code. Hence, the following order :

**O R D E R**

The conviction of the accused under section 302 of the Indian Penal Code and his sentence for life imprisonment for the offence imposed by the learned Additional Sessions Judge by the impugned judgment and order dated 5th December, 2000 in Session Case No. 96 of 2000 is quashed and set aside. Instead the accused is convicted under section 304 Part II of the Indian Penal Code. The sentence already undergone by him will be the sentence for the said offence. The sentence under section 451, 506 Part II, 504 is maintained. In view of the major sentence, no separate sentence is awarded under section 451 and 506 Part II of the Indian Penal Code. The accused Deoram Banshi Waghmare be released from custody unless otherwise required in some other case. Appeal is disposed of.

**(Smt Ranjana Desai, J)**

**(D.G.Karnik, J)**